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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,185	10/20/2003	Michael Sweeting	03-6172	2702
63710 7590 11/10/2009 INNOVATION DIVISION CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER				
BASIT, ABDUL				
ART UNIT		PAPER NUMBER		
3694				
MAIL DATE		DELIVERY MODE		
11/10/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/689,185

**Applicant(s)**

SWEETING, MICHAEL

**Examiner**

ABDUL BASIT

**Art Unit**

3694

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 7-14, 36-43, 54-55 and 57-64 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-14, 36-43, 54-55 and 57-64 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This action is in response to Applicant's remarks and amendments received on 7/2/09. In light of the amendments, the previous 35 U.S.C. 112, 102, 103 and double patenting rejections are withdrawn. However, a new search has resulted in a new 35 U.S.C. 103 rejection of claims 7-14, 36-43, 54-55 and new claims 57-64.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 7-13, 36-42, and 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Security Baskets and Index-Linked Securities, by Gary B. Gorton and Geroge G. Pennachi (The Journal of Business Vol. 66, No. 1, Jan 1993) ("Gorton") in view of Nations (US Pat. Pub. No. 2002/1038299) in further view of "Trading credit spreads: The case for a specialized exchange-traded credit futures contract." (Derivatives Use, Trading and Regulation, London 2002, Vol. 8, issue 1) by Moorad Choudhry ("Choudhry")

An interpretation of the claims suggests that the Applicant is claiming the invention to be a futures contract that is based on underlying asset classes that include fixed income bonds and credit default swaps. The 35 U.S.C. 103 rejection utilizes Gorton as suggesting that a basket of assets can be combined for creating a futures

contract. Choudhry suggests that credit default swaps can be grouped together to create a futures contract, and Nations is used to indicate that computers and software can be used in a trading scheme.

**Regarding claims 7 and 36:**

Gorton teaches:

receive[ls]] a plurality of requests to perform buying and [[a]] to selling a futures contract, (see at least pages 1-7 and 16)

wherein a buyer of the futures contract agrees to at least (i) buy a first asset underlying the futures contract and (ii) buy a second asset underlying the futures contract at an expiration of the futures contract, (see at least pages 1-7 and 16)

wherein a seller of the futures contract agrees to at least (i) sell the first asset underlying the futures contract and (ii) sell the second asset underlying the futures contract at the expiration of the futures contract, (see at least pages 1-7 and 16)

Choudhry, not Gorton, teaches that wherein the first asset comprises a fixed income bond, wherein the second asset class comprises a credit default swap issued on the fixed income bond, wherein the futures contract specifies: (see at least pages 1-5 and 12-16)

(i) a quantity of the fixed income bond to be delivered at the expiration of the futures contract, having a first value associated therewith; (see at least pages 1-5 and 12-16)  
and

(ii) a quantity of the credit default swap to be delivered at the expiration of the futures contract (see at least pages 1-5 and 12-16)

Nations, not Gorton, teaches:

An apparatus, comprising: at least one processor and a memory element electronically coupled to the at least one processor, the memory element comprising software that when executed by the at least one processor, directs the at least one processor to: wherein the apparatus is operable to receive the plurality of requests via a communications network from respective computing devices; execute a transaction involving at least one of the plurality of requests to sell the futures contract; (see at least paragraphs 12-13 and 62-64)  
provide to a respective computing device a confirmation of execution of the transaction involving the at least one request to sell the futures contract;  
execute a transaction involving at least one of the plurality of requests to buy the futures contract; and (see at least paragraphs 12-13 and 62-64)  
provide[[s]] to another respective computing device a confirmation of execution of the transaction involving the at least one request to buy the futures contract. (see at least paragraphs 12-13 and 62-64)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Nations and Choudhry. Motivation to modify exists because using computing devices to trade futures contracts is well known, and using CDS futures helps to minimize financial risks.

**Regarding claims 8 and 37:**

Gorton teaches that for the apparatus of claim 7,  
wherein the at least one request to sell the futures contract comprises proposed contract terms; (see at least pages 1-7 and 16)  
wherein the at least one request to buy the futures contract comprises proposed contract terms; and (see at least pages 1-7 and 16)

Nations, not Gorton, is taken that wherein the software, when executed by the at least one processor, further directs the at least one processor to:  
match[[es]] one or more of the proposed contract terms of, provided in the at least one request to sell with an available availability associated with the futures contract that satisfies the proposed contract terms of the at least request to sell; and (see at least paragraphs 12-13 and 62-64)  
match one or more of the proposed contract terms of the at least one request to buy with an available futures contract that satisfies the proposed contract terms of the at least one request to buy. (see at least paragraphs 12-13 and 62-64)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Nations and Choudhry. Motivation to modify exists because using computing devices to trade futures contracts is well known.

**Regarding claims 9 and 38:**

Nations, not Gorton, is taken that  
wherein the software, when executed by the at least one processor, further directs the at least one processor to:  
store[is] in another memory element [[a]] the transaction involving the at least one

request to sell the store in the another memory element the transaction involving the at least one request to buy. *(see at least paragraphs 12-13 and 62-64)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Nations and Choudhry. Motivation to modify exists because using computing devices to trade futures contracts is well known.

**Regarding claims 12 and 41:**

Nations, not Gorton, is taken that the apparatus of claim 7, wherein the software, when executed by the at least one processor, further directs the at least one processor communicates with a price reporting/dissemination element that is operable to: provide to at least one of the plurality of computing devices financial data on the futures contract. *(see at least paragraphs 12-13 and 62-64)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Nations and Choudhry. Motivation to modify exists because using computing devices to trade futures contracts is well known.

**Regarding claims 13 and 42:**

Choudhry, not Gorton, teaches that the apparatus of claim 7, wherein the-fixed income bond has a value due to a cheapest to deliver parameter results in a change *(see at least pages 1-5 and 12-16)*

wherein the credit default swap has a second value and wherein the value of the fixed income bond and the value of the credit default swap are not independent. *(see at least pages 1-5 and 12-16)*

It would have been obvious to one of ordinary skill in the art at the time of the invention

to modify Gorton with Choudhry. Motivation to modify exists because this provides an opportunity to limit financial risks.

**Regarding claim 39: Canceled**

3. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Security Baskets and Index-Linked Securities, by Gary B. Gorton and Geroge G. Pennachi (The Journal of Business Vol. 66, No. 1, Jan 1993) ("Gorton") in view of Nations (US Pat. Pub. No. 2002/1038299) in further view of "Trading credit spreads: The case for a specialized exchange-traded credit futures contract." (Derivatives Use, Trading and Regulation, London 2002, Vol. 8, issue 1) by Moorad Choudhry ("Choudhry") in further view of Benning (US Pat. Pub. No. 2004/0199451)

**Regarding claim 40**

Nations, not Gorton, teaches that for the apparatus of claim 36, wherein the buyer of the futures contract -further agrees to buy a third asset underlying the futures contract subclass the expiration of the futures contract; wherein the seller of the futures contract further agrees to sell having a the third asset underlying the futures contract value associated therewith, wherein the first, second, and third values are used at least partially to determine the price at the expiration of the futures contract; (see at least paragraphs 5, 12-13 and 62-64)

Benning, not Nations, teaches that wherein the third asset comprises a fixed income bond issued by a third government; (see at least paragraphs 40-48)

and



wherein the futures contract further specifies a quantity of the fixed income bond issued by the third government to be delivered at the expiration of the futures contract. (see at least paragraphs 40-48)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nations with Bennings. Motivation to modify exists because a futures based on a group of government bonds allows buyers and sellers to manage risk.

4. Claims 14 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Security Baskets and Index-Linked Securities, by Gary B. Gorton and Geroge G. Pennachi (The Journal of Business Vol. 66, No. 1, Jan 1993) ("Gorton") in view of Nations (US Pat. Pub. No. 2002/1038299) in further view of "Trading credit spreads: The case for a specialized exchange-traded credit futures contract." (Derivatives Use, Trading and Regulation, London 2002, Vol. 8, issue 1) by Moorad Choudhry ("Choudhry") and in further view of Gershon (US Pat. No. 7,315,838)

**Regarding claims 14 and 43:**

Gershon, not Gorton, teaches that the apparatus of claim 7, wherein the futures contract includes a pricing methodology that is based on basis points per annum, the pricing methodology being used at least partially to determine the price for the futures contract. (see at least col. 16, line 35-40)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Gershon. Motivation to modify exists because basis points pricing

is a well known method of pricing in the financial industry and allows for reliable pricing information to be communicated between different parties.

4. Claims 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Security Baskets and Index-Linked Securities, by Gary B. Gorton and Geroge G. Pennachi (The Journal of Business Vol. 66, No. 1, Jan 1993) ("Gorton") in view of Nations (US Pat. Pub. No. 2002/1038299) in further view of "Trading credit spreads: The case for a specialized exchange-traded credit futures contract." (Derivatives Use, Trading and Regulation, London 2002, Vol. 8, issue 1) by Moorad Choudhry ("Choudhry") and in further view of Pine (US Pat. No. 7,212,997)

**Regarding claims 54 and 55:**

Pine, not Gorton, teaches that the apparatus of claim 7, wherein the ~~processor~~-futures contract includes a settlement term indicating that determines a settlement price of the futures contract be based at least in part on a volume-weighted average price of a plurality of trades associated with the futures contract. (*see at least col. 19 generally*) It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Pine. Motivation to modify exists because volume weighted pricing provides for a reliable indication of price based on volume of contracts traded.

**Claim 56 (Canceled)**

5. Claims 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Security Baskets and Index-Linked Securities, by Gary B. Gorton and Geroge G. Pennachi (The Journal of Business Vol. 66, No. 1, Jan 1993) ("Gorton") in view of Nations (US Pat. Pub. No. 2002/1038299) in further view of "Trading credit spreads: The case for a specialized exchange-traded credit futures contract." (Derivatives Use, Trading and Regulation, London 2002, Vol. 8, issue 1) by Moorad Choudhry ("Choudhry") in further view of Official Notice.

**Regarding claims 57-64**

Official Notice, not Nations, is taken that a bond can be issued by various countries or corporations that may ultimately be combined together. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nations with Official Notice.

6. Alternatively, claims 7-13, 36-42, and 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nations (US Pat. Pub. No. 2002/0138299) in view of "Trading credit spreads: The case for a specialized exchange-traded credit futures contract." (Derivatives Use, Trading and Regulation, London 2002, Vol. 8, issue 1) by Moorad Choudhry ("Choudhry")

**Regarding claims 7 and 36:**

Nations teaches an apparatus, comprising: at least one processor and a memory element electronically coupled to the at least one processor, the memory element

comprising software that when executed by the at least one processor, directs the at least one processor to:

receive[[s]] a plurality of requests to perform buying and [[a]] to selling a futures contract, *(see at least paragraphs 12-13 and 62-64)*

wherein a buyer of the futures contract agrees to at least (i) buy a first asset underlying the futures contract and (ii) buy a second asset underlying the futures contract at an expiration of the futures contract, *(see at least paragraphs 12-13 and 62-64)*

wherein a seller of the futures contract agrees to at least (i) sell the first asset underlying the futures contract and (ii) sell the second asset underlying the futures contract at the expiration of the futures contract, *(see at least paragraphs 12-13 and 62-64)*

wherein the apparatus is operable to receive the plurality of requests via a communications network from respective computing devices; *(see at least paragraphs 12-13 and 62-64)*

execute a transaction involving at least one of the plurality of requests to sell the futures contract; *(see at least paragraphs 12-13 and 62-64)*

provide to a respective computing device a confirmation of execution of the transaction involving the at least one request to sell the futures contract; *(see at least paragraphs 12-13 and 62-64)*

execute a transaction involving at least one of the plurality of requests to buy the futures contract; and *(see at least paragraphs 12-13 and 62-64)*

provide[[s]] to another respective computing device a confirmation of execution of the

transaction involving the at least one request to buy the futures contract. *(see at least paragraphs 12-13 and 62-64)*

Choudhry, not Nations, teaches that wherein the first asset comprises a fixed income bond, wherein the second asset class comprises a credit default swap issued on the fixed income bond, wherein the futures contract specifies: *(see at least pages 1-5 and 12-16)*

(i) a quantity of the fixed income bond to be delivered at the expiration of the futures contract, having a first value associated therewith; *(see at least pages 1-5 and 12-16)*  
and

(ii) a quantity of the credit default swap to be delivered at the expiration of the futures contract *(see at least pages 1-5 and 12-16)*

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nations with Choudhry. Motivation to modify exists because this provides an opportunity to limit financial risks.

**Regarding claims 8 and 37:**

Nations teaches that for the apparatus of claim 7,  
wherein the at least one request to sell the futures contract comprises proposed contract terms; *(see at least paragraphs 12-13 and 62-64)*  
wherein the at least one request to buy the futures contract comprises proposed contract terms; and *(see at least paragraphs 12-13 and 62-64)*

wherein the software, when executed by the at least one processor, further directs the at least one processor to:

match[[es]] one or more of the proposed contract terms the at least one request to sell with an available availability associated with the futures contract that satisfies the proposed contract terms of the at least request to sell; and

match one or more of the proposed contract terms of the at least one request to buy with an available futures contract that satisfies the proposed contract terms of the at least one request to buy. (see at least paragraphs 12-13 and 62-64)

**Regarding claims 9 and 38:**

Nations teaches

wherein the software, when executed by the at least one processor, further directs the at least one processor to:

store[[s]] in another memory element. [[a]] the transaction involving the at least one request to sell the *(see at least paragraphs 89) and*

store in the another memory element the transaction involving the at least one request to buy. (see at least paragraph 89)

**Regarding claims 12 and 41:**

Nations teaches that the apparatus of claim 7, wherein the software, when executed by the at least one processor, further directs the at least one processor communicates with a price reporting/dissemination element that is operable to:

provide to at least one of the plurality of computing devices financial data on the futures contract. (see paragraphs 12-13)

**Regarding claims 13 and 42:**

Choudhry, not Nations, teaches that the apparatus of claim 7, wherein the-fixed income bond has a value due to a cheapest to deliver parameter results in a change (see at least pages 1-5 and 12-16)

wherein the credit default swap has a second value and wherein the value of the fixed income bond and the value of the credit default swap are not independent. (see at least pages 1-5 and 12-16)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nations with Choudhry. Motivation to modify exists because this provides an opportunity to limit financial risks.

**Regarding claim 39: Canceled**

3. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nations in view of Choudhry and in further view of Benning (US Pat. Pub. No. 2004/0199451)

**Regarding claim 40**

Nations teaches that for the apparatus of claim 36, wherein the buyer of the futures contract -further agrees to buy a third asset underlying the futures contract subclass the expiration of the futures contract; wherein the seller of the futures contract further agrees to sell having a the third asset

underlying the futures contract value associated therewith, wherein the first, second, and third values are used at least partially to determine the price at the expiration of the futures contract; (see at least paragraphs 5, 12-13 and 62-64)

Benning, not Nations, teaches that wherein the third asset comprises a fixed income bond issued by a third government; (see at least paragraphs 40-48)

and

wherein the futures contract further specifies a quantity of the fixed income bond issued by the third government to be delivered at the expiration of the futures contract. (see at least paragraphs 40-48)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nations with Bennings. Motivation to modify exists because a futures based on a group of government bonds allows buyers and sellers to manage risk.

3. Claims 14 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nations in view of Choudhry and in further view of Gershon (US Pat. No. 7,315,838)

**Regarding claims 14 and 43:**

Gershon, not Nations, teaches that the apparatus of claim 7, wherein the futures contract includes a pricing methodology that is based on basis points per annum, the pricing methodology being used at least partially to determine the price for the futures contract. (see at least col. 16, line 35-40)



It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Gershon. Motivation to modify exists because basis points pricing is a well known method of pricing in the financial industry and allows for reliable pricing information to be communicated between different parties.

4. Claims 54 and 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nations in view of Choudhry and in further view of Pine (US Pat. No. 7,212,997)

**Regarding claims 54 and 55:**

Pine, not Gorton, teaches that the apparatus of claim 7, wherein the-futures contract includes a settlement term indicating that determines a settlement price of the futures contract be based at least in part on a volume-weighted average price of a plurality of trades associated with the futures contract. (*see at least col. 19 generally*)

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Gorton with Pine. Motivation to modify exists because volume weighted pricing provides for a reliable indication of price based on volume of contracts traded.

**Claim 56 (Canceled)**

5. Claims 57-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nations in view of Choudhry and in further view of Official Notice.

**Regarding claims 57-64**

Official Notice, not Nations, is taken that a bond can be issued by various countries or corporations that may ultimately be combined together. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Nations with Official Notice.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ABDUL BASIT whose telephone number is 571-272-5506. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ab

/James P Trammell/  
Supervisory Patent Examiner, Art Unit 3694